Seattle to Indianapolis

A Presentation by
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Oregon Department of Human Services
and
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A Simple Country Lawyer

Dealing with CMS

The Rules of Engagement

Presentation Outline

- Background
- Current CMS Action
- LEA responses
- CMS – our government in action
- How you can help
- Some useful facts

Background

- Medicaid and the Great Society (1965)
- Early Periodic Screening, Diagnosis and Treatment (EPSDT-1967)
- IDEA (1975)
- 1989 Omnibus Budget Reconciliation Act (OBRA)
- EPSDT: A Guide for Educational Programs (1980)
- 1991 Lewin Report
- 1997 Technical Assistance
- 2000/2003 MAC Guide
- Oklahoma and free care

Current CMS Action

- Eliminate reimbursement for administrative and transportation services
- Codify free care “rule” e.g. 1, 2
- Targeted Case Management
- Third Party Liability
- EPSDT vs. Rehabilitation Option
- SPA approvals ? (RAI, etc.)
- CO or RO ?

LEA (and friends) Responses

- Kennedy (S. 3705) and Dingell (HR 5834) bills*
  - A little help from our friends
  - Campaign for Cosponsors
- Senate Appropriations language
- Letters to HHS Secretary
- Breach of Good Faith (1)
- FOIA
- Litigation
- Media events
- LEAnet
- “Is it worth the embarrassment?”

*Protecting Children’s Health in Schools Act of 2006

CMS - Our Government in Action

- 2000 Draft MAC Guide
- 2003 MAC Guide
  - Public Comment Period
- OIG audits
- No further Oklahoma waivers
- Interim Final (what happened to the first eight steps?)
- “90% of all school Medicaid billings are fraudulent” and other myths
- Oops! What happened on the CMS website?

Some Useful Facts

- Total Federal Medicaid expenditures for 2005 are estimated to be approximately $300 billion
- Estimated Medicaid reimbursement for school programs for 2005 is $2 billion = .045% (Congressional Research Service)
  - $834 million MAC
- The LaPorte Texas OIG audit was done in 2005 using the 2003 MAC Guide rules on activities from 2000

More Useful Facts

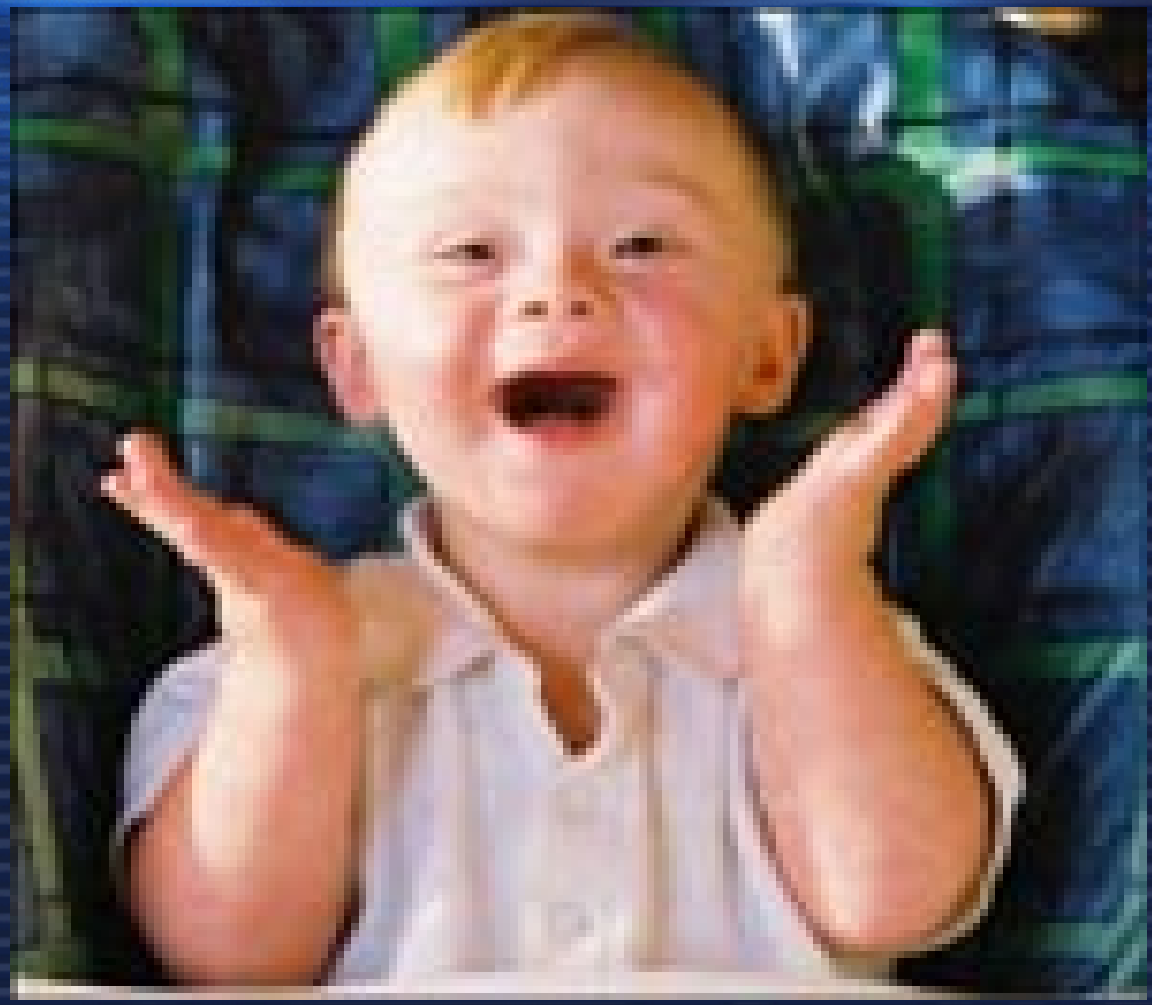
- The Oklahoma DAB opinion held that “the free care principle is not an interpretation of any provision of the [SSA] Act nor, indeed, any regulation implementing a provision of the Act.”
- California had a free care waiver until 2000, but CMS refused to renew it

More Useful Facts

- Approximately 30% to 50% of all uninsured children qualify for Medicaid

How You Can Help

- This is a fight that will be won
  - This is a fight that will be won because we are on the right side
  - This is a fight that will be won by individual effort
- Contact with HHS directly or through your state officials or your Members of Congress
- Collect and communicate anecdotal evidence of value/impact of MAC funds
- Sign up to receive the LEAnet eZine
- Be ready for the final assault
- Take no prisoners and leave here remembering why you are in the business in the first place – it's about the children



Thank You

Phone: 410 786–0131
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RIN: 0938–AN76

979. FIRE SAFETY REQUIREMENTS FOR LONG–TERM CARE FACILITIES: SPRINKLER SYSTEMS (CMS–3191–P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule would require all long-term care facilities to be equipped with sprinkler systems. This proposed rule requests public comment, including comment on the duration of a phase-in period, to allow long-term care facilities to install such systems.

Timetable:

Action	Date	FR Cite
NPRM	07/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Danielle N. Shearer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Clinical Standards Group, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6617
Fax: 410 786–8532
Email: danielle.shearer@cms.hhs.gov

RIN: 0938–AN79

980. PAYMENTS FOR SERVICE PROVIDED WITHOUT CHARGE (CMS–2489–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The proposed rule would clarify that Federal Financial Participation (FFP) is not available to States on behalf of Medicaid beneficiaries for Medicaid-covered services provided without charge (that is, free care) to individuals receiving the services. Free care means a particular service is available without charge to an individual who receives the service or to any third party on behalf of the individual.

Timetable:

Action	Date	FR Cite
NPRM	12/00/06	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Ellen W. Blackwell, Disability & Elderly Health Programs Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid State Operations, Mailstop S2–26–12, 7500 Security Boulevard, Baltimore, MD 21244–1850
Phone: 410 786–4498
Fax: 410 786–3262
Email: ellen.blackwell@cms.hhs.gov

RIN: 0938–AO07

981. • QUALITY STANDARDS FOR GENETIC TESTING (CMS–2121–P)

Priority: Other Significant

Legal Authority: Sec. 353 of Public Health Service Act [42 USC 263a]

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule would add to the Clinical Laboratory Improvement Amendment (CLIA) regulations a new specialty of genetic testing that will address recommendations by the Clinical Laboratory Improvement Advisory Committee (CLIAC) and the Secretary's advisory committee for genetic testing.

Timetable:

Action	Date	FR Cite
NPRM	11/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Cecelia Hinkel, Health Insurance Specialist, Division of Laboratory Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicaid State Operations, Mailstop S2–12–25, 7500 Security Boulevard, Baltimore, MD 21244–1850
Phone: 410 786–3347
Email: cecelia.hinkel@cms.hhs.gov

RIN: 0938–AO09

982. MEDICAL IMPROVEMENT ELIGIBILITY GROUP AND DEFINITION OF WORK (CMS–2143–P)

Priority: Other Significant

Legal Authority: PL 105–33 sec 4733 Balanced Budget Act of 1997; PL 106–170 sec 201 Ticket to Work and Work Incentives Improvement Act of 1999

CFR Citation: 42 CFR 435.236; 42 CFR 436.232

Legal Deadline: None

Abstract: In order to provide health services to employed individuals whose medical conditions have improved to the point where they are no longer eligible for disability benefits, this proposed rule would provide a definition of "medically determinable severe impairment" under the Ticket to Work and Work Incentives Improvement Act of 1999 (Ticket to Work). Under this definition, States can determine eligibility standards for the Medical Improvement Group authorized under the Ticket to Work law, thereby permitting individuals to retain their Medicaid coverage. Additionally, this proposed rule would give States offering Medicaid buy-in programs for employed individuals with disabilities the option of selecting a minimum work standard for participation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/06	

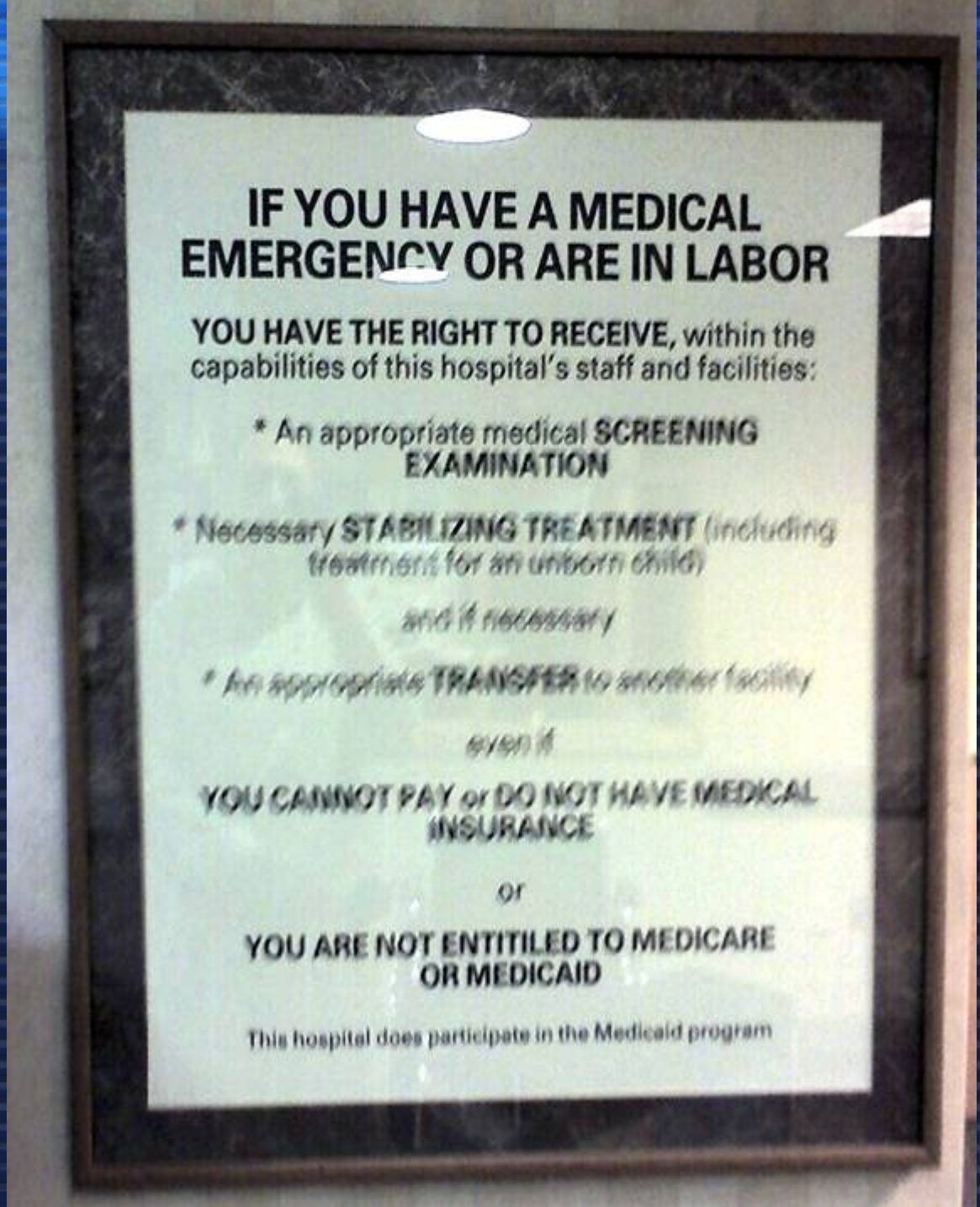
Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Carey Appold, Technical Director, Disabled & Elderly Health Programs Group, Div. of Advocacy and Special Issues, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, Mailstop

Back


IF YOU HAVE A MEDICAL EMERGENCY OR ARE IN LABOR
YOU HAVE THE RIGHT TO RECEIVE, within the capabilities of this hospital's staff and facilities:
* An appropriate medical SCREENING EXAMINATION
* Necessary STABILIZING TREATMENT (including treatment for an unborn child)
and if necessary
* An appropriate TRANSFER to another facility
even if
YOU CANNOT PAY or DO NOT HAVE MEDICAL INSURANCE
or
YOU ARE NOT ENTITILED TO MEDICARE OR MEDICAID
This hospital does participate in the Medicaid program

Back

State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Donald L. Carcieri
Governor

September 8, 2006

The Honorable George W. Bush
The President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

I would like to bring to your attention changes to Medicaid reimbursements proposed by the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS). The regulatory revisions underway by CMS will have a direct negative impact on my state, as well as every other state.

CMS is expected to move forward in the coming months with an Interim Final Rulemaking that will eliminate local school districts' ability to seek reimbursement for Medicaid Administrative Claiming, including transportation. If implemented, this would result in a $4.2 million loss for Rhode Island's schools and, more importantly, our students.

In the 2004-05 school year, school districts in my state spent almost $409 million on special education programs, accounting for 22% of all educational program expenditures. Medicaid reimbursements for that year were $23.6 million, of which $4.2 million was for administrative claiming. Our schools rely heavily on these Medicaid reimbursements to help defray the rising costs of special education programs. While our reimbursement figures are not that dramatic due to the size of our state, the elimination of these funds would result in a major impact on our educational system.

Moreover, due to past CMS regulatory revisions, our schools have consistently been losing these reimbursement funds. As a result of the last round of cuts made in 2003, Rhode Island school districts lost $5.3 million dollars in Medicaid reimbursements from state FY 2004 to state FY 2006 (anticipated); of that, our urban schools, which have a high percentage of Medicaid-eligible children, lost over $3.6 million. These districts serve the state's most vulnerable population who require many special health services in order reach their educational potential.

Nationally, school-based health programs amount to less than one percent of the total federal Medicaid budget, but are critical to each and every school. The National Governor's Association recognized this in their June 27th letter to Health and Human Services Secretary Michael Leavitt, stating that, "Such changes in state [Medicaid] plans would impose a huge financial burden on states," and further, that the "Governors urge you to reconsider implementing these proposed administrative changes and continue to work with states to develop mutually beneficial reforms for the future."

School districts increasingly are finding it difficult to function in this financial climate and maintain the intent of both Title XIX and IDEA. I understand the challenge of budgetary constraints, but am asking for your assistance in intervening with CMS' attempt to cut funding for these vital services for our most needy children.

Sincerely,

Donald L. Carcieri
Governor

cc: The Honorable Michael O. Leavitt, Secretary, U.S. Department of Health and Human Services
The Honorable Margaret Spellings, Secretary, U.S. Department of Education
The Honorable Jack Reed, United States Senator
The Honorable Lincoln D. Chafee, United States Senator
The Honorable Patrick J. Kennedy, United States Representative
The Honorable James R. Langevin, United States Representative
Mr. Peter McWalters, Commissioner, R.I. Department of Elementary and Secondary Education

Back

www.theleanet.com

www.medicaidforeducation.org

www.gregontheweb.com